

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

Michael G. Willits

APPLICATION NO:

10/517,903

FILED: December 10, 2004

FOR: FLAVONOL EXPRESSING DOMESTICATED TOMATO AND METHOD OF PRODUCTION

GROUP ART UNIT:

1638

CONFIRMATION NO:

4683

EXAMINER: Keith O. Robinson

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO RESTRICTION REQUIREMENT**

Sir:

In response to the Restriction/Election Requirement dated March 23, 2009 requesting an election of one invention to prosecute in the above-referenced patent application, Applicants hereby elect to prosecute the invention of Group I, claims 37-43, drawn to a method of making a hybrid *Lycopersicon* plant expressing flavonol in the peel and flesh of the fruit of said plant by crossing a wild *Lycopersicon* species that expresses CHI in the peel and that expresses genes of the flavonol biosynthetic pathway in the flesh with a *L. esculentum* plant to produce said hybrid plant and hybrid plants produced thereof. This election is made with traverse as noted below.

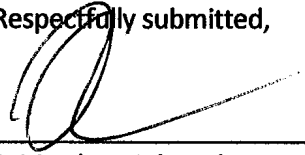
The Examiner has stated that Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding technical features. The Examiner then defines the linking technical feature as flavonol content of tomato, and then states that this technical feature is not inventive over the prior art. The Examiner then cites a paper which discusses over-expression of the CHI gene in tomato fruit peel.

Applicants submit that the Examiner has over-simplified the technical feature of the invention and in so doing has erroneously concluded that the technical feature uniting the two claim groups is not novel. The true uniting technical feature of claim Groups I-II is the expression of flavonol in the flesh of the tomato plant. The Examiner's reduction of this technical feature to only "flavonol content of tomato" unfairly characterizes the novelty of the invention. As the Examiner has provided no evidence of any prior art which would remove this technical feature, Applicants respectfully request that this restriction requirement be withdrawn and the claims as currently pending be allowed to move forward to prosecution.

Applicants reserve their statutory right under §121 to prosecute the subject matter of the non-elected inventions in a timely-filed application.

Applicants believe there is no fee due with this response. However, the Commissioner is hereby authorized to charge any fees deemed necessary, or credit any overpayment, to Deposit Account No. 50-1744 in the name of Syngenta Biotechnology, Inc.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'S. Matthew Edwards', written over a horizontal line.

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Date: April 3, 2009